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# SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1939

No. 1034 96 ✓.

R. G. TRIPPETT and A. H. MEADOWS,  
Petitioners,  
*versus*

POLARIS IRON COMPANY, ET AL.,  
Respondents.

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## PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

And

### BRIEF IN SUPPORT OF PETITION FOR CERTIORARI.

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W. H. SANFORD,  
C. HUFFMAN LEWIS,  
EDWARD S. KLEIN,  
Counsel for Petitioners.

Wilkinson, Lewis, Wilkinson & Naff,  
Of Counsel.



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## PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT.

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*To the Honorable, the Chief Justice and Associate Justices  
of the Supreme Court of the United States:*

Your petitioners, R. G. Trippett and A. H. Meadows,  
respectfully show to this Honorable Court:

A.

### SUMMARY STATEMENT OF MATTERS INVOLVED.

The assets of Texota Corporation, a Texas Corporation, consisted of a producing oil and gas lease in the East Texas oil field, together with cash in the corporation's treasury.

Prior to the adoption of the Rules of Civil Procedure for the District Courts of the United States, 28 U. S. C. A. following Section 723c, Polaris Iron Company, a Minnesota corporation and a former shareholder in Texota Corporation, instituted this action in equity in the United States District Court for the Western District of Louisiana, against petitioners, Louisiana citizens and shareholders in Texota Corporation, for an accounting for the difference in price paid plaintiff for its share of stock in Texota Corporation by petitioners and the amount later received by them from the sale of the corporation's lease to the Rancho Oil Company.

Polaris Iron Company having brought the suit for itself and such other former stockholders of Texota Corporation as desired to join in the action, a joint petition of intervention, seeking the same relief, was filed by H. R. Elliott and Rollo N. Chaffee, Minnesota citizens, Mr. and Mrs. G. E. Grininger, Oklahoma citizens, and Mrs. Margaret Christensen, an Illinois citizen, all former stockholders in the Texota Corporation.

For convenience, as in the courts below, Polaris Iron Company and intervenors may be referred to as the Minnesota group.

Although there was no trust or confidence reposed by this Minnesota group in petitioners, whose claim to have been the elected officers and directors of the Texota Corporation by vote of the majority of the corporation's Class B stock (the holders of which stock had the right to

elect two of the corporation's three directors) had been denied continually, openly and by litigation in the lower and appellate courts of the State of Texas until the bringing of this action (R. 130, 160-163), there was a finding of fraud against petitioners based upon the breach of the alleged fiduciary relation between corporate directors and stockholders, and the accounting sought by Polaris Iron Company and interveners was granted.

However, the decree on the accounting as rendered by the District Court and affirmed by the Circuit Court of Appeals gave no consideration to the fact that the money judgment recovered by respondents against petitioners included income and excess profits taxes in the amount of \$27,997.57 claimed to be due by the Commissioner of Internal Revenue of the United States from Texota Corporation and from petitioners as its transferees and sole stockholders at the date of its dissolution by reason of the sale of the corporation's oil and gas lease to Rancho Oil Company, which matter now is pending and undetermined before the United States Board of Tax Appeals.

## B.

### **REASONS RELIED ON FOR THE ALLOWANCE OF THE WRIT.**

If the judgment is permitted to stand, petitioners, in addition to the money judgment rendered against them on the basis of \$43.44 for each share of Texota stock acquired from respondents, may be compelled to pay an additional amount of \$40 for each share so purchased by them in settlement of the income and excess profits tax

assessment sought to be imposed upon them as transferees of Texota Corporation.

In affirming the judgment on the accounting which was rendered without ascertaining what amount petitioners finally may be required to pay on the assessed tax claim against them, the Circuit Court of Appeals has decided in an untenable way an important question of general law, and has so far sanctioned the departure from the accepted and usual course of judicial proceedings by the District Court as to call for the exercise of this Court's power of supervision, particularly as the Circuit Court of Appeals has affirmed the District Court's judgment without even so much as alluding or mentioning in its written opinion the contention and claim of your petitioners, duly presented and renewed on appeal, in respect to the income and excess profit tax assessment.

WHEREFORE (and for the reasons set out in the brief in support hereof), your petitioners pray that a writ of certiorari issue out of and under the seal of this Honorable Court, directed to the United States Circuit Court of Appeals for the Fifth Circuit, commanding that court to certify and to send to this Court, for its review and determination, a full and complete transcript of the record, and other proceedings of said court, had in the case numbered and entitled on its docket, No. 9305, R. G. Trippett and A. H. Meadows, appellants, v. Polaris Iron Company, et al., appellees, to the end that this cause may be

reviewed and determined by this Court as provided for by the statutes of the United States; and that the judgment herein of said Circuit Court of Appeals may be reversed by this Honorable Court, and that your petitioners may have such other and further relief in the premises as to this Honorable Court may seem meet and just; and for such further relief as to this Court may deem proper.

R. G. TRIPPETT and A. H. MEADOWS,  
By W. H. SANFORD,  
C. HUFFMAN LEWIS,  
EDWARD S. KLEIN,  
Counsel for Petitioners.

Wilkinson, Lewis, Wilkinson & Naff,  
Of Counsel.